



COMMONWEALTH of VIRGINIA
Office of the Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

Mark R. Herring
Attorney General

April 9, 2015

Peter Blake
Executive Director
State Council of Higher Education for Virginia
James Monroe Building
101 North 14th Street
Richmond, Virginia 23219

Re: Virginia Student Financial Assistance Program Regulations - Virginia Guaranteed Assistance Program and Commonwealth Awards (8 VAC 40-131)

Dear Mr. Blake:

The State Council of Higher Education for Virginia ("SCHEV") has asked for a review of its authority to promulgate and amend the above-referenced regulations.

Under Va. Code § 2.2-4000(B)(4), the promulgation and amendment of these regulations are not subject to the Virginia Administrative Process Act because the agency action relates to grants of state funds. Virginia Code § 23-9.6:1(15) vests SCHEV with the authority to promulgate such regulations as may be necessary to carry out its powers and duties under the Code. Under the statutory framework for the Virginia Guaranteed Assistance Program, Va. Code § 23-38.53:4 provides, "The Council shall promulgate regulations for the implementation of the provisions of this chapter." Additionally, the 2015 Act of Appropriation, Chapter 665, § 4-5.01(b), "Student Financial Assistance for Higher Education," expressly contemplates SCHEV's supervisory role in the administration of the Virginia Guaranteed Assistance Program and Commonwealth Awards. Because the promulgation of regulations for the implementation of the program is expressly the responsibility of SCHEV, it is my view that SCHEV has the mandated authority to promulgate such regulations and amend them as necessary. I find that it is necessary and appropriate to amend the regulations cited above such that they are consistent with the Virginia Code, as well as the 2015 Act of Appropriation.

I further find that the proposed regulations are consistent with the statutory grant of authority to promulgate them, are consistent with the statutes and the Act of Appropriation, and are internally consistent. The proposed regulations do not appear to conflict with state or federal statutes. And the proposed regulations appear to have no Constitutional defect.

If you require additional assistance on this matter, please do not hesitate to contact me.

Respectfully,

/s/

Mike F. Melis
Assistant Attorney General